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11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)**

13 HARRY J. WILLIBY,) Case No. 15-cv-02538-EJD
14 Plaintiff,)
15 v.) **DEFENDANTS' NOTICE OF MOTION**
16 HEARST CORPORATION, et al.,) **AND SUPPORTING MEMORANDUM OF**
17 Defendants.) **POINTS & AUTHORITIES IN SUPPORT**
18) **OF THEIR SPECIAL MOTION TO**
19) **STRIKE UNDER THE CALIFORNIA**
20) **ANTI-SLAPP STATUTE AND MOTION**
21) **TO DISMISS FOR FAILURE TO STATE A**
22) **CLAIM AND FOR LACK OF PERSONAL**
23) **JURISDICTION**
24)
25) Hearing Date: June 2, 2016
26) Time: 9:00 a.m.
27) Dept.: Courtroom 4, 5th Floor
28) Judge: Hon. Edward J. Davila

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on June 2, 2016 at 9:00am, or as soon thereafter as this
3 matter may be heard before the Honorable Edward J. Davila of the above-entitled Court located
4 at 280 South 1st Street, San Jose, California, Defendants Hearst Corporation and Ernesto
5 Mourelo move to strike the Complaint pursuant to the California anti-SLAPP statute and move to
6 dismiss the Complaint for failure to state a claim and for lack of personal jurisdiction.

7 Defendants' motion is based on this Notice of Motion, the accompanying Memorandum
8 of Points and Authorities filed herewith, all pleadings and papers on file in this matter, and such
9 other matters as may be presented to this Court at the hearing or otherwise.

10 Dated: January 4th, 2016

11 THE HEARST CORPORATION

12 Ravi V. Sitwala

13 By: /s/ Ravi V. Sitwala
Ravi V. Sitwala

14 Attorney for Defendants Hearst Corporation and
15 Ernesto Mourelo

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendants The Hearst Corporation and Ernesto Mourelo respectfully submit the following brief in support of their Special Motion to Strike the complaint pursuant to the California anti-SLAPP statute, California Code of Civil Procedure § 425.16 *et seq.*, and Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

PRELIMINARY STATEMENT

This is a defamation case targeting a comment placed on Plaintiff Harry Williby’s (“Williby”) YouTube channel The Attorney Depot by Defendant Ernesto Mourelo (“Mourelo”) expressing Mourelo’s view that Williby’s copying of entire news stories produced and aired by Hearst Television stations constitutes copyright infringement. The case targets Mourelo’s speech in a public forum concerning a legal dispute and a matter of public concern and is therefore subject to California’s anti-SLAPP statute, requiring Williby to show through admissible evidence a probability of prevailing on his claims for defamation and intentional interference with prospective economic advantage. Williby cannot carry his burden for numerous reasons.

As an initial matter, Williby’s claims against The Hearst Corporation should be stricken as it is merely the indirect corporate parent of Mourelo’s employer, Hearst Television Inc. The claims against Mourelo—the only other defendant—should also be stricken because Williby has failed to establish personal jurisdiction over Mourelo in California. While Williby claims jurisdiction is proper over a New York resident merely based on Williby’s residence in California, Williby has not alleged that Mourelo expressly aimed his conduct at California.

Beyond these threshold issues, Williby’s claims also fail on the merits. The challenged statement is protected opinion based on disclosed facts. The context of the statement—in a heated exchange over a legal dispute in an online community—further serves to show that it is protected opinion not susceptible to a defamation claim. Even if the statement were treated as fact, Williby cannot show falsity, as required. Williby claims the statement is false because his copying of the Hearst Television footage is fair use. However, Williby’s wholesale copying of news stories with no commentary or alteration for commercial purposes is not fair use under governing law. Independently, as the owner and proprietor of a media channel, Williby is a public figure for

1 purposes of commentary about the channel. As such, he is required to show actual malice by clear
 2 and convincing evidence. Given Mourelo's good faith (and correct) belief in the truth of his
 3 comments, Williby cannot show actual malice. All of these reasons also require that the intentional
 4 interference claim be stricken, as it is subject to the same constitutional standards and the
 5 defamation claims. In addition, Williby fails to plausibly allege facts to support numerous elements
 6 of the intentional interference claim. Finally, for the same reasons Williby's claims should be
 7 stricken pursuant to the anti-SLAPP statute, they should also be dismissed pursuant to Rule 12(b)
 8 for lack of personal jurisdiction and failure to state a claim.

9 **BACKGROUND¹**

10 Plaintiff Harry Williby runs a YouTube channel called The Attorney Depot. *See*
 11 <https://www.youtube.com/user/theattorneydepot>. Williby describes the channel as follows:

12 The Attorney Depot™! Quality, Global, Uncensored, truth-in-advertisement Internet
 13 Television, Movies, Videos and Clips! The Attorney Depot™ is the place to find your
 14 favorite channels under one global roof! The Attorney Depot™ Provides Global
 15 Advertisement Opportunities! DON'T GET STUCK IN BETWEEN THE YELLOW
 16 PAGES! Subscribe Now & Contact us about going GLOBAL with your Digital Video
 17 Advertisement @ theattorneydepot@gmail.com.

18 *See* <https://www.youtube.com/user/theattorneydepot/about>; *see also* Compl. ¶ 12 (“Plaintiff [] has
 19 held the YouTube channel, The Attorney Depot, out as a Global, reputable Journalistic News
 20 source; a Global, reputable, Legal News source; a Global, reputable, (profit maximizing)
 21 advertising medium; and a Global, reputable, business entity.”). The channel consists of various
 22 news clips compiled by Williby. *See* <https://www.youtube.com/user/theattorneydepot/videos>.
 23 Williby has posted numerous clips of entire news segments produced and owned by Hearst
 24 Television stations (operated by indirect subsidiaries of Defendant The Hearst Corporation).
 25 Declaration of Ernesto Mourelo (“Mourelo Decl.”) ¶¶ 3-8. As part of Hearst Television’s efforts to

26 ¹ The facts set forth below are largely derived from the Complaint. Some facts, such as the
 27 copied videos and quotations from Plaintiff’s YouTube channel, are properly considered on a
 28 motion to dismiss because they are relied upon heavily and integral to the Complaint. *See Mulinix
 v. Unifund CCR Partners*, No. 07-CV-1629, 2008 WL 2001747 (S.D. Cal. May 5, 2008).
 Moreover, in ruling on an anti-SLAPP motion, “the court shall consider the pleadings, and
 supporting and opposing affidavits stating the facts upon which the liability or defense is based.”
 See Cal. Civ. Proc. Code § 425.16.

1 combat infringement of its content, Defendant Mourelo sent a series of take-down notices to
 2 YouTube pursuant to the Digital Millennium Copyright Act. *See id.*, *see also* Compl. ¶ 16. In
 3 response, Williby sent DMCA counter-notices to have the video clips restored, claiming that—
 4 notwithstanding his posting of entire clips without any material alteration or commentary—he
 5 believed his use constituted fair use. *See* Mourelo Decl. ¶ 9; *see also* Compl. ¶ 17.

6 After the clips were re-posted by YouTube based on Williby’s counter-notices, Defendant
 7 Mourelo posted a comment on Williby’s YouTube channel page (the “Statement”), stating: “Fight
 8 Piracy on YouTube,” “[y]ou stole this clip from a legitimate news source,” “[i]t’s called copyright
 9 infringement.” Compl. ¶ 21; Mourelo Decl. ¶ 10. Based on these comments, Williby has brought
 10 defamation and intentional interference with prospective economic relations claims against The
 11 Hearst Corporation and Mourelo, seeking \$10 million in damages and an additional \$10 million
 12 dollars of punitive damages. *See* Compl. ¶¶ 21, 38.

13 **ARGUMENT**

14 **I. WILLIBY’S CLAIMS SHOULD BE STRICKEN PURSUANT TO THE**
 15 **CALIFORNIA ANTI-SLAPP STATUTE**

16 Under the California Anti-SLAPP statute, section 425.16 of the California Civil Procedure
 17 Code, “a cause of action against a person arising from any act of that person in furtherance of the
 18 person’s right of petition or free speech under the United States Constitution or the California
 19 Constitution in connection with a public issue shall be subject to a special motion to strike”
 20 Cal. Civ. Proc. Code § 425.16(b)(1). The California anti-SLAPP statute broadly protects the
 21 discussion of issues of concern to the public by “nip[ping] SLAPP litigation in the bud by striking
 22 offending causes of action” *Braun v. Chronicle Publ’g Co.*, 52 Cal. App. 4th 1036, 1042 (Cal.
 23 Ct. App. 1997); *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 192 (2005) (the purpose of the
 24 law is “to prevent SLAPPs by ending them early and without great cost to the SLAPP target”)
 25 (citation omitted). The Ninth Circuit statute has “long held that the anti-SLAPP statute applies to
 26 state law claims that federal courts hear pursuant to their diversity jurisdiction.” *Hilton v. Hallmark*
 27 *Cards*, 599 F.3d 894, 900 n.2 (9th Cir. 2010).

1 The anti-SLAPP statute “establishes ‘a two-step process for determining’ whether an action
 2 should be stricken” *See Varian*, 35 Cal. 4th at 192 (citation omitted). First, “a defendant
 3 ‘must make an initial *prima facie* showing that the plaintiff’s suit arises from an act in furtherance
 4 of the defendant’s rights of petition or free speech.’” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d
 5 1097, 1110 (9th Cir. 2003) (citation omitted). “A defendant meets this burden by demonstrating
 6 that the act underlying the plaintiff’s cause fits one of the categories spelled out in section 425.16,
 7 subdivision (e).” *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002) (citing *Braun*, 52 Cal. App. 4th at
 8 1043); *see also Hecimovich v. Encinal Sch. Parent Teacher Org.*, 203 Cal. App. 4th 450, 463 (Cal.
 9 Ct. App. 2012), *review denied* (Apr. 25, 2012). Subdivision (e) sets forth the following categories:

- 10 (1) any written or oral statement or writing made before a legislative, executive, or
 judicial proceeding, or any other official proceeding authorized by law,
- 11 (2) any written or oral statement or writing made in connection with an issue under
 consideration or review by a legislative, executive, or judicial body, or any other
 official proceeding authorized by law,
- 12 (3) any written or oral statement or writing made in a place open to the public or a
 public forum in connection with an issue of public interest, or
- 13 (4) any other conduct in furtherance of the constitutional right of
 petition or the constitutional right of free speech in connection with a public issue or
 an issue of public interest.

14 Cal. Civ. Proc. Code § 425.16(e).

15 Here, the allegedly defamatory comments are covered by several categories. As pre-
 16 litigation communications, they are covered by one or both of the first two sub-sections. *See, e.g.*,
 17 *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 47 Cal. App. 4th 777, 784 (Cal. Ct. App. 1996)
 18 (holding that pre-litigation communications between private parties are covered by the anti-SLAPP
 19 statute). In addition, they are covered by the last two sub-sections as free speech in a public forum
 20 connected to an issue of public interest. The comments were clearly made in a place open to the
 21 public as well as a public forum, as Williby admits in his Complaint. *See, e.g.*, Compl. ¶¶ 5, 8
 22 (referring to YouTube as “a forum for people to connect, inform, and inspire others across the
 23 globe”); *see also Barrett v. Rosenthal*, 40 Cal. 4th 33, 41 n.4 (2006) (“Web sites accessible to the
 24 public . . . are ‘public forums’ for purposes of the anti-SLAPP statute.”). They also were made in
 25 connection with an issue of public interest, as Williby also concedes, alleging that it was
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1 “republished and read by the YouTube Community and the general public throughout the United
 2 States and elsewhere.” Compl. ¶ 25; *see also Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th
 3 1027, 1042 (Cal. Ct. App. 2008) (“‘[A]n issue of public interest’ within the meaning of section
 4 425.16, subdivision (e)(3) is any issue in which the public is interested. In other words, the issue
 5 need not be ‘significant’ to be protected by the anti-SLAPP statute—it is enough that it is one in
 6 which the public takes an interest.” (emphasis omitted)).

7 Having demonstrated that the statute applies, the burden shifts to Williby to demonstrate “a
 8 probability of prevailing on [his] claim[s].” *Varian*, 35 Cal. 4th at 192 (citations omitted). He
 9 cannot rely on the bare allegations of his own pleading to try to show that the complaint would
 10 survive a demurrer. *See Navellier v. Sletten*, 106 Cal. App. 4th 763, 776 (Cal. Ct. App. 2003).
 11 Instead, he must “establish evidentiary support for [his] claim[s].” *Id.* at 775-76 (emphasis and
 12 citations omitted). Specifically, Williby must demonstrate that his claims are “supported by a
 13 *prima facie showing of facts to sustain a favorable judgment* if the evidence submitted by [him are] credited.” *Taus v. Loftus*, 40 Cal. 4th 683, 745 (2007) (emphasis added). Otherwise the court must
 14 strike the complaint. See Cal. Civ. Proc. Code § 425.16(b)(1). For the reasons discussed below,
 15 Williby cannot establish facts that would support a judgment in his favor.

16 **A. The Hearst Corporation Is Not a Proper Defendant**

17 Williby has sued The Hearst Corporation (“Hearst”), recognizing in his Complaint that
 18 Hearst owns an “interest” in 29 television stations, including the stations at issue. *See* Compl. ¶ 6.
 19 However, Hearst’s ownership of the stations is just that—a corporate interest as an indirect parent
 20 corporation to Hearst Television Inc., which itself is the parent to the corporate entities that operate
 21 the stations at issue. Declaration of Catherine A. Bostron (“Bostron Decl.”) ¶ 2. And, as the
 22 Complaint also recognizes, Defendant Mourelo is employed by Hearst Television Inc., not The
 23 Hearst Corporation. Compl. ¶ 7; Mourelo Decl. ¶ 1. Accordingly, while Williby attempts to
 24 attribute Mourelo’s actions directly to The Hearst Corporation through agency principles, *see*
 25 Compl. ¶ 16, there is no basis for The Hearst Corporation to be held directly liable for the actions
 26 of employees of its indirect subsidiaries. *See whiteCryption Corp. v. Arxan Techs., Inc.*, No. 15-
 27 CV-00754-WHO, 2015 WL 3799585, at *2 (N.D. Cal. June 18, 2015) (“It is ‘a general principle of

1 corporate law deeply ingrained in our economic and legal systems that a parent corporation . . . is
 2 not liable for the acts of its subsidiaries.””) (quoting *United States v. Bestfoods*, 524 U.S. 51, 61
 3 (1998)).

4 **B. Mourelo Is Not Subject to Personal Jurisdiction**

5 Williby alleges that personal jurisdiction is proper over defendants in California because
 6 YouTube’s parent company (Google) is located in California and because Plaintiff resides in
 7 California. Neither of these bases actually supports the exercise of personal jurisdiction over
 8 Defendant Mourelo, who Williby concedes is a New York resident.² Compl. ¶¶ 1-2. Williby’s first
 9 theory of jurisdiction—that postings on internet platforms give rise to personal jurisdiction in the
 10 state where the company that offers the platform is located—has no legal basis and should be
 11 rejected out of hand. His second theory—that personal jurisdiction exists in internet defamation
 12 claims wherever the plaintiff is located—is similarly devoid of support. To the contrary, courts
 13 have held that, without more, these facts do not support personal jurisdiction over a non-resident
 14 defendant. *See, e.g., Xcentric Ventures, LLC v. Bird*, 683 F. Supp. 2d 1068, 1074 (D. Ariz. 2010).
 15 Instead, it must be shown that the defendant expressly aimed its conduct towards the forum. *See id.*
 16 Here, Williby does not allege that Mourelo expressly targeted his conduct towards California.
 17 Accordingly, Williby has failed to allege facts supporting personal jurisdiction over Mourelo.

18 **C. Williby’s Claims Fail on the Merits**

19 Even if Williby had sued the right corporate party or could sustain an exercise of personal
 20 jurisdiction over Mourelo, his claims would fail on the merits for several reasons.

21 *1. The Statements Are Opinion Based on Disclosed Facts*

22 Williby’s primary claim is one for defamation, which he alleges as two separate counts. In
 23 particular, Williby claims that the Statement by Mourelo defamed him because it cast him as a
 24 “thief” and “not a ‘legitimate’ sources [sic] of news reporting.” Compl. ¶ 24. As an initial matter,
 25 the Statement did not say anything about whether Williby was a legitimate source of news
 26 reporting—it simply recounted Mourelo’s view that Williby’s wholesale copying of Hearst

28 ² Neither basis supports jurisdiction over The Hearst Corporation either, but The
 Hearst Corporation is not challenging personal jurisdiction in this matter.

1 Television news stories was copyright infringement. While this statement is true, as discussed
 2 below, it is in any event clearly a statement of Mourelo's opinion based on disclosed facts evident
 3 to any reader. "A statement of opinion based on fully disclosed facts can be punished only if the
 4 stated facts are themselves false and demeaning," because "[w]hen the facts supporting an opinion
 5 are disclosed, readers are free to accept or reject the author's opinion based on their own
 6 independent evaluation of the facts." *See Franklin v. Dynamic Details, Inc.*, 116 Cal. App. 4th 375,
 7 387 (Cal. Ct. App. 2004) (citation and quotation marks omitted)); *see also Wynn v. Chanos*, 75 F.
 8 Supp. 3d 1228, 1233-34 (N.D. Cal. 2014) ("When the facts underlying a statement of opinion are
 9 disclosed, readers will understand they are getting the author's interpretation of the facts presented;
 10 they are therefore unlikely to construe the statement as insinuating the existence of additional,
 11 undisclosed facts." (citation omitted)). Indeed, "[a]ccusations of criminal activity, like other
 12 statements, are not actionable if the underlying facts are disclosed." *Franklin v. Dynamic Details,*
 13 *Inc.*, 116 Cal. App. 4th 375, 388 (Cal. Ct. App. 2004) (citing *Nicosia v. De Rooy*, 72 F. Supp. 2d
 14 1093, 1103 (N.D. Cal. 1999)).

15 Courts in this Circuit apply a three-factor test to determine whether statements are protected
 16 opinion as opposed to actionable facts. The factors are: the general context of the statement, the
 17 specific context of the statement, and the susceptibility of the statement to be proved true or false.
 18 *Amaretto Ranch Breedables, LLC v. Ozimals, Inc.*, No. CV 10-5696 CRB, 2013 WL 3460707, at
 19 *3 (N.D. Cal. July 9, 2013). "The first factor the Court considers is the broad context of [the]
 20 statements, paying particular attention to setting, subject matter, format, and tenor." *Id.* at *4.
 21 Statements made online in blogs or other internet discussions as well as those made in the heated
 22 context of a legal dispute are not likely to be viewed by readers as objective facts. *Id.* "The Court
 23 next considers the content of the allegedly defamatory statements, which includes the extent of
 24 figurative and hyperbolic language and the reasonable expectations of the readers." *Id.* (quotations
 25 omitted). Even where statements include legal conclusions such as assertions of intellectual
 26 property infringement, they should be not considered assertions of fact where the statements are
 27 made with "additional context [for readers] to decide whether to accept or reject [the] opinions
 28 based on their own independent evaluations." *Id.* "Lastly, the Court determines whether the

1 statements at issue are provable as true or false.” *Id.* at *5. Where the question of truth “is a close
 2 one” involving “a murky legal issue,” statements should be viewed as opinions even if the ultimate
 3 question “might be provable as true or false after a lengthy . . . lawsuit” *Id.*

4 Here, all of the factors weigh heavily in favor of finding that the Statement is non-
 5 actionable opinion. It was made in a comment section of a community website in the context of a
 6 heated legal dispute by an interested party. It includes hyperbolic language and was made in the
 7 context of the very facts on which the claim was based, which allows readers to watch the clip
 8 copied by Williby and decide for themselves whether the copying constitutes copyright
 9 infringement as concluded by Mourelo. And it involves a murky legal issue—fair use—which can
 10 often be a close call (although not here, as discussed below). Accordingly, as a protected statement
 11 of opinion, the Statement cannot support Williby’s defamation claims, which should be stricken.³

12 2. *The Allegedly Defamatory Statement is Substantially True*

13 “Truth is a complete defense to defamation.” *Terry v. Davis Cnty. Church*, 131 Cal. App.
 14 4th 1534, 1553 (Cal. Ct. App. 2005). In cases against media entities involving matters of public
 15 concern, it is the plaintiff’s burden to prove falsity. *Phila. Newspapers, Inc. v. Hepps*, 475 U.S.
 16 767, 775 (1986). Here, there is no dispute that Williby copied the Hearst Television stations’
 17 footage. Instead, the issue is whether Williby’s copying of entire news stories in his YouTube
 18 channel without alteration or commentary for purposes of selling advertising constitutes fair use. It
 19 does not.

20 Fair use involves a multi-factor inquiry that includes consideration of the familiar factors set
 21 forth in 17 U.S.C. § 107. *See L.A. News Serv. v. KCAL-TV Channel 9*, 108 F.3d 1119, 1121 (9th
 22 Cir. 1997). Under the first factor—the purpose and character of the use—Williby’s use of Hearst
 23 Television’s news clips for the purpose of reporting news is in no way transformative. *See id.*; *see also L.A. News Serv. v. Reuters Television Int’l, Ltd.*, 149 F.3d 987, 993 (9th Cir. 1998); *L.A. Times*
 24 *v. Free Republic*, No. CV 98-7840 MMM(AJWX), 2000 WL 565200, at *8 (C.D. Cal. Apr. 4,

26 ³ In addition to being protected opinion, the pre-litigation communication should be
 27 absolutely privileged under the litigation privilege codified by California Civil Code section 47.
 28 *See Dove Audio, Inc.*, 47 Cal. App. 4th at 781; *Designing Health, Inc. v. Erasmus*, No. CV-98-4758
 LGB (CWX), 2001 WL 36239748, at *3 (C.D. Cal. Apr. 24, 2001).

1 2000). Williby's commercial motive in copying the news stories also weighs against fair use under
 2 this factor. *See L.A. News Serv. v. Reuters Television Int'l, Ltd.*, 149 F.3d at 994; *L.A. News Serv.*
 3 *v. KCAL-TV Channel 9*, 108 F.3d at 1121.

4 The second factor—the nature of the copyrighted work—arguably favors fair use, given the
 5 factual nature of the work. *See L.A. News Serv. v. KCAL-TV Channel 9*, 108 F.3d at 1122.
 6 However, given the production value of the news clips at issue, unlike the raw footage at issue in
 7 the *L.A. News Service* cases, and the complete copying of this expressive content, this factor is
 8 more neutral than in those cases. *See L.A. Times*, 2000 WL 565200, at *21.

9 The third factor—the amount and substantiality of the taking—weighs against fair use,
 10 given the fact that the entire news clips were taken by Williby. *See Hustler Magazine Inc. v. Moral*
 11 *Majority Inc.*, 796 F.2d 1148, 1154-55 (9th Cir. 1986) (finding that a stand-alone component of a
 12 larger publication is the entire work for purposes of fair use analysis).

13 Finally, the fourth factor—the effect of the use on the potential market for the original—
 14 weighs decidedly and dispositively against fair use, given Williby's offering of Hearst Television's
 15 news stories (for purposes of selling advertising) as a complete substitute for Hearst Television's
 16 own distribution of the stories both in broadcast and online. *L.A. News Serv. v. Reuters Television*
 17 *Int'l, Ltd.*, 149 F.3d at 994; *L.A. News Serv. v. KCAL-TV Channel 9*, 108 F.3d at 1122-23; *see also*
 18 Mourelo Decl. ¶ 11.

19 In sum, given the non-transformative, commercial use of Hearst Television's news stories
 20 by Williby, and the usurpation of Hearst Television's market to disseminate its stories online,
 21 Williby's use of the footage is not fair use. *See L.A. News Serv. v. Reuters Television Int'l, Ltd.*,
 22 149 F.3d at 994; *L.A. News Serv. v. KCAL-TV Channel 9*, 108 F.3d at 1122-23; *see also Monge v.*
 23 *Maya Magazines, Inc.*, 688 F.3d 1164, 1176 (9th Cir. 2012); *Elvis Presley Enters., Inc. v. Passport*
 24 *Video*, 349 F.3d 622, 629 (9th Cir. 2003), *overruled on other grounds as stated in Flexible Lifeline*
 25 *Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 995 (9th Cir. 2011) (per curiam).

26 3. *Williby Fails to Allege and Cannot Show the Requisite Degree of Fault*

27 Williby alleges that he “is the Owner/Editor-in-Chief” of multiple blogs including his
 28 “flagship, global blog Corrupt Justice . . . (a news blog with a global audience, reaching

1 approximately 14,000-20,000 readers per month; and a total of nearly 800,000 (reader) page views
 2 to date.” Compl. ¶ 5. He further alleges that he “is also the Owner/Chief Video Editor of the
 3 YouTube, LLC channel The Attorney Depot, created on October 14, 2008, and grossing over eight
 4 million (8,400,000+) global views.” *Id.* In addition, he alleges that his personal and business
 5 Google Plus accounts have 1,351,399 followers. *Id.* Accordingly, as a self-proclaimed owner of a
 6 substantial media outlet, Williby is a public figure for purposes of his activities in connection with
 7 that outlet (if not for all purposes). *See Stoltz v. KSFM 102 FM*, 30 Cal. App. 4th 195, 207 (Cal. Ct.
 8 App. 1994). Accordingly, he must allege and prove by clear and convincing evidenced facts
 9 proving that defendants acted with actual malice—that is, that defendants published the allegedly
 10 defamatory statements with subjective knowledge of their falsity or substantial doubts as to their
 11 truth. *Id.* at 202. While Williby includes a conclusory allegation of actual malice, Compl. ¶ 28, he
 12 fails to allege any facts to support his conclusion, *see Biro v. Conde Nast*, No. 14-3815-CV, 2015
 13 WL 8103736, at *3 (2d Cir. Dec. 8, 2015), and in any event cannot meet his anti-SLAPP burden of
 14 coming forward with evidence to support his claim of actual malice, *see, e.g., Barker v. Fox &*
 15 *Assocs.*, 240 Cal. App. 4th 333, 355 (Cal. Ct. App. 2015). To the contrary, Mourelo believed his
 16 statements to be true when he posted them (and continues to believe they are true). Mourelo Decl.
 17 ¶ 10. Accordingly, Williby’s defamation claims should be stricken for failure to show actual
 18 malice.

19 4. *The Claim for Intentional Interference of Prospective Economic Relations*
 20 *Fails as It is Derivative of the Defamation Claims and Suffers from Other*
 21 *Defects*

22 “Although the limitations that define the First Amendment’s zone of protection for the press
 23 were established in defamation actions, they are not peculiar to such actions but apply to all claims
 24 whose gravamen is the alleged injurious falsehood of a statement: that constitutional protection
 25 does not depend on the label given the stated cause of action, and no cause of action can claim
 26 talismanic immunity from constitutional limitations.” *Blatty v. N.Y. Times Co.*, 42 Cal. 3d 1033,
 27 1042 (1986) (citations, quotations, and alterations omitted). Williby’s claim for intentional
 28 interference with prospective economic relations targets the same speech targeted by his
 defamation claims and therefore must meet the same First Amendment standards. Because the

1 statement at issue is protected as opinion, is not false, and was not made with actual malice, the
 2 intentional interference claim fails.

3 In addition, Williby has not sufficiently alleged the elements of an intentional interference
 4 claim. “To state a claim for intentional interference with economic advantage, plaintiff must
 5 allege: 1) an existing economic relationship or one ‘containing the probability of future economic
 6 benefit’; 2) knowledge by the defendant of the relationship; 3) acts by defendant designed to disrupt
 7 the relationship; 4) actual disruption of the relationship; 5) damages proximately caused by the acts
 8 of the defendant.” *AccuImage Diagnostics Corp v. Terarecon, Inc.*, 260 F. Supp. 2d 941, 956
 9 (N.D. Cal. 2003) (citing *Della Penna v. Toyota Motor Sales, U.S.A.*, 11 Cal. 4th 376, 380 n.1 &
 10 392-93 (1995)).

11 Williby fails to allege several of these elements. In support of the first element, requiring an
 12 existing economic relationship or one “containing the probability of future economic benefit,”
 13 Williby offers nothing more than conclusory allegations, simply claiming that “Mourelo,
 14 intentionally interfered with an economic relationship between Plaintiff and the Google, Inc. . . .
 15 that probably would have resulted in an economic benefit to Plaintiff” Compl. ¶ 35. But
 16 merely repeating the elements of the tort and relying on conclusory language do not survive a
 17 motion to dismiss, let alone an anti-SLAPP motion. *See, e.g., Architectural Mailboxes, LLC v.*
 18 *Epoch Design, LLC*, No. 10CV974 DMS CAB, 2011 WL 1630809, at *6 (S.D. Cal. Apr. 28, 2011)
 19 (“[W]hile Plaintiff may have a speculative expectation that a potentially beneficial relationship will
 20 eventually arise, that expectation is insufficient to state a claim for intentional interference with
 21 prospective economic advantage.” (citation and quotation marks omitted)).

22 This is equally true with other elements of the claim—requiring knowledge by the
 23 defendant of the relationship and acts by defendant designed to disrupt the relationship—as Williby
 24 offers nothing more than the conclusory allegation that “Plaintiff further alleges that Defendant
 25 Hearst Corporation and her agent, Defendant Ernesto Mourelo, knew of the economic relationship;
 26 and That Defendant Hearst Corporation and her agent, Defendant Ernesto Mourelo, intended to
 27 disrupt the relationship.” Compl. ¶ 35.

28

1 Finally, although Williby makes various references to alleged damages—demanding
2 \$10,000,000 in compensatory damages and \$10,000,000 in punitive damages—he fails to offer
3 anything other than conclusory allegations regarding such damages, and fails to allege *how* any
4 damages were proximately caused by the acts of Defendants, or *what* those damages consist of.
5 See Compl. ¶ 31 (simply alleging that “[t]he publication and republication of the statement,
6 proximately caused general and special damages to Plaintiff”); Compl. ¶ 33 (alleging that “[t]he
7 statement has damaged Plaintiff’s professional standing in the YouTube community”).
8 Accordingly, the intentional interference claim should be stricken both because Williby does not
9 allege plausible facts supporting the claim and because it is derivative of the defamation claims,
10 which fail for the numerous reasons discussed above.

II. THE COMPLAINT SHOULD BE DISMISSED PURSUANT TO RULE 12(b)

12 For the reasons discussed above, Williby's claims should be stricken pursuant to the
13 California anti-SLAPP statute. For the same reasons, Williby's Complaint should be dismissed for
14 failure to state a claim under Rule 12(b)(6) and for lack of personal jurisdiction over Defendant
15 Mourelo under Rule 12(b)(2). As discussed, Williby does not plausibly allege facts supporting
16 either defamation or intentional interference with prospective economic relations. Nor does he
17 allege facts to support an exercise of personal jurisdiction over Mourelo.

CONCLUSION

19 For the foregoing reasons, this Court should grant Defendants' motion to strike Williby's
20 complaint pursuant to the California anti-SLAPP statute and dismiss the complaint pursuant to
21 Rules 12(b)(6) and 12(b)(2) and grant Defendants such other relief as it deems just.

Respectfully submitted,

By: /s/ Ravi V. Sitwala
Ravi V. Sitwala

Attorney for Defendants
HEARST CORPORATION AND ERNESTO
MOURELO

Dated: January 4, 2016

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

HARRY J. WILLIBY,
Plaintiff,
v.
HEARST CORPORATION, et al.,
Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2016, I caused a copy of the foregoing to be served on Plaintiff by electronic mail as follows:

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